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Administration of justice at the United Nations

**Practice of the Secretary-General in disciplinary
matters and possible criminal behaviour, 1 July 2005
to 30 June 2006**

Report of the Secretary-General

Summary

The present report is submitted in response to a request of the General Assembly in paragraph 16 of its resolution 59/287 of 13 April 2005 to inform Member States on an annual basis on all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action, and where appropriate, legal action, taken in accordance with the established procedures and regulations. The present report covers the period from 1 July 2005 to 30 June 2006.

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I. Introduction

1. The present report is submitted in response to a request of the General Assembly in paragraph 16 of its resolution 59/287 to inform Member States on an annual basis on all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action, and where appropriate, legal action, taken in accordance with the established procedures and regulations. The present report covers the period from 1 July 2005 to 30 June 2006.

2. As requested in paragraph 17 of resolution 59/287, an information circular is being issued so that all staff of the Organization will be informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff members concerned.

3. A broad overview of the administrative machinery in disciplinary matters is provided in section II below so that the data provided in sections III and IV can be understood in context. Section III of the report contains a summary of the cases for which a disciplinary measure was imposed by the Secretary-General during the reporting period. Section IV contains comparative data and reader-friendly figures reflecting the disposition of all cases that were completed during the reporting period, including cases that did not result in the imposition of a disciplinary measure, and provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

II. Overview of administrative machinery in disciplinary matters

A. Rules governing the conduct of staff members¹

4. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and *integrity*" (emphasis added).

5. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 101.2 for specific instances of expected or prohibited conduct.

B. Misconduct

6. Article X of the Staff Regulations, entitled "Disciplinary measures", provides in regulation 10.2 that "the Secretary-General may impose disciplinary measures on

¹ For a full overview of relevant provisions, see Secretary-General's bulletin ST/SGH/2002/13, entitled "Status, basic rights and duties of United Nations staff members", issued at the request of the General Assembly. Provisions relating to the status, rights and obligations of staff members, and to disciplinary matters, can also be found in the electronic Human Resources Handbook under "Status, basic rights and duties" and "Disciplinary".

staff members whose conduct is unsatisfactory". Staff rule 110.1, on misconduct, provides that "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct ... leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct". Similarly, staff rule 101.2 (a) provides that "disciplinary procedures ... may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules, and all administrative issuances". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371, on revised disciplinary measures and procedures,² provides further examples of conduct for which disciplinary measures may be imposed.

C. Due process

7. Where the head of office or responsible officer believes, on the basis of an investigation, that disciplinary procedures may be warranted, he or she will refer the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.³ During the period covered by the report, preliminary investigations were undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of the head of office. The adoption of General Assembly resolution 59/287 has given greater responsibility to the Office of Internal Oversight Services in this regard.

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter, the first step is to notify the staff member in writing of the allegations as well as of his or her right to seek the assistance of counsel. The staff member is given a reasonable opportunity to respond to the allegations. In the light of the comments provided by the staff member, it is decided whether to close the case, to refer it to a Joint Disciplinary Committee for advice or to summarily dismiss the staff member.

9. While the Secretary-General has broad discretionary authority in deciding upon an appropriate measure in each case, no staff member can be subjected to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice as to what measures, if any, are appropriate. Such referral to a Joint Disciplinary Committee may be waived when the staff member concerned and the Secretary-General agree on a disciplinary measure and the proceedings would therefore serve no valid purpose. When the seriousness of the case warrants summary dismissal, prior referral to a Joint Disciplinary Committee is not required; however, staff members who have been summarily dismissed may, at their initiative,

² Also relevant is administrative instruction ST/AI/379, on procedures for dealing with sexual harassment.

³ The head of administration in a mission will refer the case to the Department of Peacekeeping Operations, Personnel Management and Support Service, at Headquarters, which will refer the matter to the Office of Human Resources Management if it concurs with the mission.

seek a review of their case by a Joint Disciplinary Committee. All staff members subjected to disciplinary measures ultimately have recourse to the United Nations Administrative Tribunal.⁴

D. Disciplinary measures

10. Staff rule 110.3 provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in each case):

- (a) Written censure by the Secretary-General;
- (b) Loss of one or more steps in grade;
- (c) Deferment, for a specified period, of eligibility for within-grade increment;
- (d) Suspension without pay;
- (e) Fine;
- (f) Demotion;
- (g) Separation from service, with or without notice or compensation in lieu thereof;
- (h) Summary dismissal.

11. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and extenuating circumstances.

E. Other measures

12. Reprimands, written or oral, by a supervisory official are not considered disciplinary measures. Like warnings or letters of caution, they are managerial measures. However, they are also important measures for upholding standards of proper conduct and promoting accountability. Where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

III. Summary of cases for which the Secretary-General imposed a disciplinary measure during the period from 1 July 2005 to 30 June 2006

13. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measures imposed by the Secretary-General. The function or other

⁴ Numerous judgements of the United Nations Administrative Tribunal relate to disciplinary measures and show the practice of the Secretary-General for those cases brought before the Tribunal. Digests of those cases can be found in the online "Case and Jurisprudence Digest" (see <http://webfarmext.un.org/hrmtribunal>).

particulars of the staff member are provided only when they played a role as aggravating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

14. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is not sufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to allegations the case is closed and the staff member is considered cleared of the allegations. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the official status file.

A. Abuse of authority/harassment

15. A staff member was found to have (a) sexually harassed another staff member; (b) harassed a second staff member; and (c) interfered with an official investigation into allegations against him. *Disposition:* demotion by one level for a period of five years, with no possibility of promotion during that time.

16. A staff member abused his authority by improperly initiating a sexual exploitation and abuse investigation against another staff member. *Disposition:* separation from service with compensation in lieu of notice.

17. A staff member engaged in sexual and professional harassment of staff and abuse of authority as a manager. *Disposition:* summary dismissal.

18. A staff member sexually harassed a staff member under his supervision and abused his power and authority with respect to her and other staff under his supervision. *Disposition:* summary dismissal.

19. A staff member engaged in unwelcome sexual advances, verbal and physical conduct of a sexual nature and sexual harassment. *Disposition:* summary dismissal.

B. Fraud/misrepresentation

20. A staff member misrepresented the facts about the ownership of his personal belongings in an incident report. *Disposition:* separation from service.

21. A staff member submitted a forged invoice in support of an education grant claim, falsely certified her education grant claim and attempted to defraud the Organization. *Disposition:* summary dismissal.

C. Theft/misappropriation

22. A staff member lent the property of the Organization to a third party without permission. The property was stolen and later sold. After the property was recovered, the staff member then lent the property to the same third party. *Disposition:* written censure.

23. A staff member stole United Nations property, which he used for his personal benefit, and then forged false receipts for the property in order to be reimbursed by a third party. *Disposition:* separation from service.

24. A staff member stole United Nations property. *Disposition:* summary dismissal.

D. Sexual exploitation and sexual abuse

25. A staff member engaged in sexual activity with a minor. *Disposition:* summary dismissal.

26. A senior manager encouraged a working environment that tolerated and/or promoted breaches of confidentiality and security, and sexual exploitation and abuse, failed to take appropriate action when evidence of wrongdoing was brought to his attention and refused to cooperate with an official investigation. *Disposition:* summary dismissal.

27. A staff member engaged in sexual relations with a woman and two underage girls in exchange for money. *Disposition:* summary dismissal.

28. A staff member (a) sexually exploited and abused four employees of a United Nations contractor; (b) sexually harassed them; and (c) accepted payment from a person in exchange for a promise of employment with the Organization. *Disposition:* summary dismissal.

29. A staff member engaged in sexual exploitation and sexual abuse of a national of the host country. *Disposition:* summary dismissal.

E. Other

30. A staff member (a) actively participated in disclosing highly confidential information; (b) publicly discredited his supervisor and the Organization; (c) interfered with the official activities of the Organization; and (d) used his office equipment for purposes other than official business. *Disposition:* summary dismissal.

31. A staff member was convicted of driving under the influence of alcohol on two occasions, causing a traffic accident on one and leaving the scene of the accident without providing his personal information on the other. *Disposition:* censure.

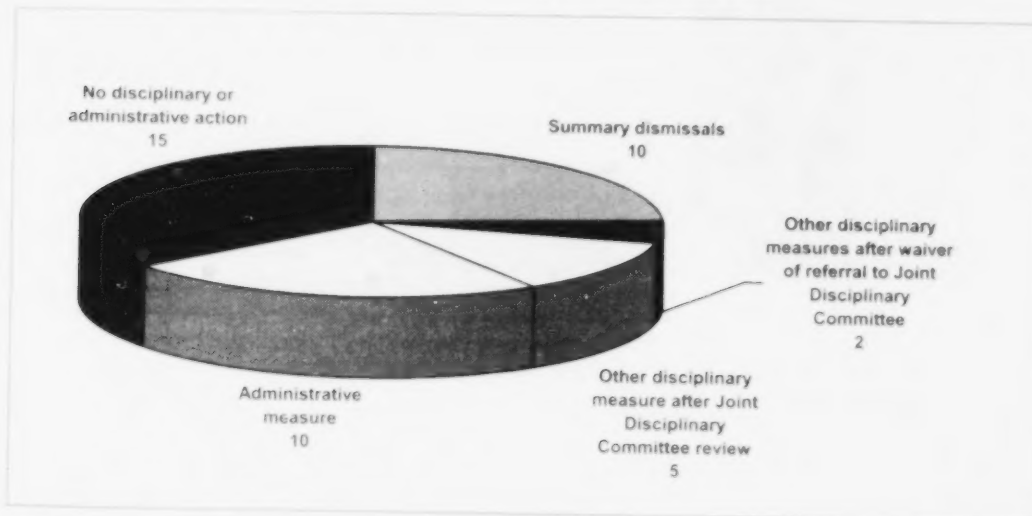
IV. Disposition of all cases completed during the period from 1 July 2005 to 30 June 2006

32. The list below shows the total number of cases that were completed during the reporting period, including those that did not result in the imposition of a disciplinary measure. It should be noted that, owing to the time required to process disciplinary matters under established procedures, including the need in some cases to obtain further information after the initial investigation, the requirement to give staff members an opportunity to provide comments on charges of misconduct and referral of a case to a Joint Disciplinary Committee for advice, the figures reflect

cases completed during the reporting period that had been referred to the Office of Human Resources Management prior to and during the reporting period.

Approximate number of staff	30 000
Number of cases completed during the reporting period	42
Summary dismissals	10
Other disciplinary measures after waiver of referral to the Joint Disciplinary Committee	2
Other disciplinary measure after the Joint Disciplinary Committee review	5
Administrative measure ⁵	10
No disciplinary or administrative action ⁶	15

Figure 1
Disposition of cases completed in the period from 1 July 2005 to 30 June 2006



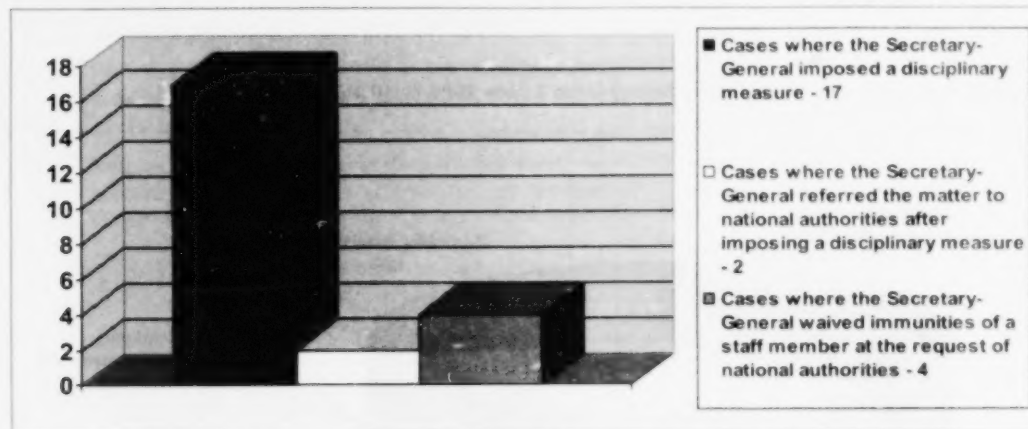
33. When an investigation into allegations about a staff member's conduct shows that criminal activity may have occurred, the Secretary-General may decide to refer

⁵ Administrative measures include written or oral reprimands, warnings and letters of caution, all of which are important measures for upholding standards of proper conduct and promoting accountability. Additionally, where behaviour affects performance, the issue is addressed in the context of performance management, which may include training, counselling, withholding of salary increments and non-renewal of or termination of appointment.

⁶ As noted in paragraph 14 of the present report, the decision not to take disciplinary or administrative action is normally based on lack of evidence of misconduct or wrongdoing. In certain cases, no action was taken because the staff member had separated from service during the investigation owing to resignation or office-wide downsizing.

the case to the national authorities. During the reporting period, of the 17 cases in which the Secretary-General imposed a disciplinary measure, one was referred to the national authorities. During the reporting period, the Organization also referred to the national authorities one case in which the Secretary-General had imposed a disciplinary measure prior to the reporting period. In addition, at the request of the national authorities, the Secretary-General decided to waive immunity from legal process in the cases of four Secretariat staff members who had been named as alleged perpetrators. The decisions to waive immunity in those cases were made because immunity would have impeded the course of justice. They should not be construed as having been made on the merits of the allegations against the concerned staff members, who remain innocent until proven guilty.

Figure 2
Cases of alleged criminal behaviour



34. The Secretary-General recommends that the General Assembly take note of the present report.